



The Attorney General of Texas

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Honorable Gibson D. (Gib) Lewis
Speaker of the House
Texas House of Representatives
P. O. Box 2910
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Open Records Decision No. 424

Re: Whether State Auditor's
reports of audit activities
at the Texas Department of
Corrections are open under
the Open Records Act

Dear Speaker Lewis:

You have received a request from a member of the media for

reports, findings, information and any other
communications concerning the state auditor's
activities at the Texas Department of Corrections
delivered on a daily, weekly, or monthly basis
from the state auditor to the Speaker of the
House.

You state that you are chairman of the Legislative Audit Committee,
the committee which appoints the state auditor and to which he is
accountable. See V.T.C.S. arts. 4413a-8, 4413a-9. The state auditor
has forwarded to you reports to him from members of his staff who have
been working at the Department of Corrections [hereafter TDC]. These
are weekly reports titled "Continuous Audit Memo at Department of
Corrections for week ended [date]." You have concluded that each
document requested is excepted from public disclosure by section
3(a)(16) of the Open Records Act, article 6252-17a, V.T.C.S. You also
believe that sections 3(a)(3) and 3(a)(11) each apply to a portion of
the material.

Section 3(a)(16) of the Open Records Act excepts from public
disclosure "the audit working papers of the State Auditor." Information which is not required to be disclosed to the public under the Open Records Act may still be transferred between state agencies without destroying its protected status. Attorney General Opinions H-917 (1976); H-683 (1975); H-242 (1974). Such a transfer is not a release of the records to the public. See art. 6252-17a, §14(a). The state auditor's records, when transferred to the legislative committee which appoints and supervises the auditor, retain the same protection under section 3(a)(16) and other exceptions which they have in the auditor's custody.

Open Records Decision No. 164 (1977) considered whether section 3(a)(16) applied to a list of charges prepared by assistant auditors in examining a state agency. The decision stated that section 3(a)(16) protects some auditor's records, the release of which would reveal the "timing, scope, or strategy of an audit." Open Records Decision No. 164 at 4. In addition, section 3(a)(16) also protects the opinions and discussion of the auditor and his employees, and information related to certain law enforcement efforts. See V.T.C.S. arts. 4413a-14, 4413a-16. Releasing the purely factual list of charges did not compromise any of these interests. The list merely provided additional details about audit exceptions already made public.

Open Records Decision No. 164 was expressly limited to its facts. It noted that in some cases "a large and cohesive body of factual information . . . could be analyzed to reveal audit strategy" or could consist of "factual information which is impossible to separate from the auditor's evaluation of it." Open Records Decision No. 164 at 5. For these reasons, each request must be the subject of an individual determination.

In our opinion, the audit memos are protected from public disclosure by section 3(a)(16). In the weekly audit memos the auditors report their day by day activities, including their examination of records, preparation of reports, and interviews with Department of Corrections personnel, interspersing opinion and evaluation of these various sources of information. Some of the memos set out audit goals and state whether they have been reached. Taken as a whole, the memos reveal to a great extent what information the auditors look for in auditing an agency, and their methods of finding and evaluating it. The factual information about the auditor's daily activities reflects the scope, direction, and strategy of the audit. The information indicating audit strategy cannot reasonably be severed from other factual information. We believe that section 3(a)(16) excepts the weekly audit memos from disclosure in their entirety.

Most of the memos have as attachments documents taken from the files of the Department of Corrections. These attachments include newspaper clippings, fiscal information from TDC, the Legislative Budget Office and Comptroller's Office, TDC policies and procedures on a variety of subjects, job descriptions, and intra-office memoranda. Although the attachments taken together may reveal something about the subjects the auditors investigated, we do not believe that they reveal audit strategy in this instance, and thus section 3(a)(16) does not apply to them as a whole. However, the auditors placed handwritten notes on certain documents, primarily newspaper clippings. These comments are auditor's evaluations of material considered in auditing TDC and are excepted from public disclosure by section 3(a)(16). We have marked these portions of the attachments.

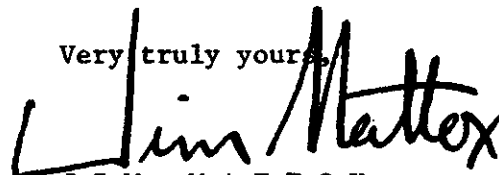
You also state that sections 3(a)(3) and 3(a)(11) except portions of the requested material from disclosure. Section 3(a)(3), the

litigation exception, applies to information relevant to a pending or reasonably anticipated lawsuit against the state. See Open Records Decision Nos. 331, 328 (1982). You have not cited any specific litigation that is pending or reasonably anticipated. However, some attachments show on their face that they relate to pending litigation styled L.D. White v. Texas Department of Corrections. This information may be withheld pursuant to section 3(a)(3). We have marked the relevant items.

Section 3(a)(11) protects from public disclosure "inter-agency or intra-agency memorandums or letters" It protects "advice and opinion on policy matters and [encourages] open and frank discussion . . . concerning administrative action." Attorney General Opinions MW-372 (1981); H-436 (1974); Open Records Decision Nos. 406 (1984); 344 (1982). Factual information that can be severed from the portion containing opinion and advice must be disclosed. Id. See Environmental Protection Agency v. Mink, 410 U.S. 73, 86-88 (1973). A number of the attachments to the weekly memos are protected from disclosure, at least in part, by section 3(a)(11). We have marked that attached material excepted from disclosure by section 3(a)(11).

The remaining attachments are not excepted from public disclosure by section 3(a)(3), 3(a)(11), or 3(a)(16) and must be disclosed to the requestor. This decision is limited to the body of documents requested and submitted to this office.

Very truly yours,


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